(2)

No. 87-1605

SUPREME COURT, U.S.
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In The

Supreme Court of the United States

October Term, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL,

Petitioners

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL,

Respondents

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Hubert S. Stilley, Jr.
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Leslie Rae Ratcliff
Christie Lane Ratcliff
Ross J. Gendusa
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The following parties are respondents in the proceeding for writ of certiorari:

Louisiana State Board of Elementary and Secondary Education
Claire Roy Landry
Bro. Felician Fourrier, S.C.
Marie Louise Snellings
James V. Soileau
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Jesse H. Bankston
John A. Bertrand
A. J. Roy
Mary Evelyn Parker, former Treasurer of the State of Louisiana
Joseph H. Burris, Legislative Auditor of the State of Louisiana

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Article 8, Section 3 8

Article 8, Sections 9 and 10 8

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—o—

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REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

—o—

ARGUMENT

I. THE PRECISE ISSUE POSED BY THE PETITION FOR WRIT WAS DECIDED IN SAN ANTONIO V. RODRIGUEZ.

The case at bar is legally indistinguishable from *San Antonio Independent School District v. Rodriguez*, 411

U.S. 163, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Petitioners here contend that Louisiana should be forced to adopt a system for funding public education which provides sufficiently more state money per student to the parishes (counties) with relatively less taxable local wealth to ensure that the same amount of money ultimately is spent per child for education in each loyal system across the state. Louisiana, like Texas and the great majority of states, funds public schools from a mixture of state, federal and local sources. The level of the local contribution varies according to the desire and ability of each county or parish to raise funds for its schools and thus the amount spent per child varies among the different school districts. The plaintiffs' writ application raises precisely the same issue that was decided in *Rodriguez* in which the constitutionality of Texas' school funding system was upheld.

The net effect of Texas' system of financing public education and Louisiana's is quite similar; actually, Louisiana's system shows less of the "discrimination" of which the petitioners complain. Louisiana provides a greater percentage of funds relative to the local district's contribution than was found in the Texas system; that is, Louisiana provides 53.4 per cent of funding and the local districts pay 36.8 per cent whereas in Texas the locals apparently roughly match the state's payments. See petitioners' writ application, p. 3; *Rodriguez*, 93 S.Ct. at 1303. The discrepancy in funds spent per child in the ten districts in Texas with the highest per capita taxable value compared to the per pupil expenditure in the least "property wealthy" districts is roughly a 2.7 to 1 ratio. *Rodriguez*, 93 S.Ct. at 1287. In Louisiana (omitting from discussion

anomalous Cameron Parish, a sparsely populated coastal parish with tremendous oil revenues), the ratio of the second greatest parish expenditure per child to the lowest such expenditure is less than 2 to 1. See respondents' Appendix A which was petitioner's Exhibit 7 at trial.

The *Rodriguez* Court concluded that those districts having more valuable property had a greater capability for supplementing state funds which led to inter-district disparities in the amount of money spent per child. *Rodriguez*, 93 S.Ct. at 1303. However, the Court rejected Plaintiffs' notion that a publicly funded education is a fundamental right guaranteed under the Constitution or that any suspect category was involved in the Texas system of financing public education in part by local taxing effort. The Court concluded that the existence of some inequalities between the districts was not a sufficient basis for striking down the system. Moreover, the Texas system would not be held unconstitutional just because there might be some methods of satisfying the State's interest which occasioned "less drastic" disparities and expenditures. *Rodriguez*, 93 S.Ct. at 1306. Finally, the Court concluded that under the Texas plan, the State abundantly satisfied the "rationality" test. *Rodriguez*, 93 S.Ct. at 1308.

Petitioners cite in their brief Louisiana's homestead exemption which insulates the first $75,000 of value of residential properties from taxation and the exemption's allegedly deleterious effect on the plaintiff parishes' ability to tax for school funding. Petitioners argue that this twist to the Louisiana taxation system distinguishes the case from *Rodriguez*. This Court's *Rodriguez* decision, however, evinced little concern for the exact details of the Texas

system of taxation and reimbursement to the local systems but instead proclaimed the broad discretion afforded to the legislature over such matters, stating as follows:

> "We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues . . . The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . It has been pointed out that in taxation even more than in other fields legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with the local conditions which this court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes" . . . *Rodriguez,* 93 S.Ct. at 1300-1301.

Just as in *Rodriguez,* the plaintiffs here have not been able to identify a cognizable class of persons (much less a "suspect" category) who are disadvantaged under the Louisiana system of funding public education. For example, the taxpayers in Livingston and Grant Parishes who are supposedly disadvantaged by the homestead exemption law have among their numbers numerous homeowners who are precisely the beñeficiaries of the exemption. If these homeowners want to raise more money to supplement the state's appropriation, they can vote to increase their tax rates, a burden which is offset by their savings from the homestead exemption.

II. LOUISIANA DOES NOT DISCRIMINATE AGAINST THE PETITIONERS IN ITS DISTRIBUTION OF STATE FUNDS.

Petitioners suggest that this Court's decision in *Papasan v. Allain,* 106 S.Ct. 2932 (1986), is controlling, ap-

parently on the theory that by allowing parishes to retain local sales tax revenues, Louisiana has made a "deliberate state decision to divide resources unequally among school districts." Petitioners' writ application, p. 21. The flaw in this argument is that locally imposed and collected sales tax revenues are not state resources. Petitioners offer no legal authority to support their radical premise that a state must collect all sales taxes and then redistribute them to counties on a per capita basis so that the same amount is spent for services on each resident of the state.

At issue in *Papasan* was Mississippi's decision to distribute certain state funds unequally to school districts by a ratio of 100 to 1 in some cases. Justice White, writing the majority opinion, distinguished *Papasan* from *Rodriguez* as follows:

> "This case is therefore very different from *Rodriguez*, where the differential financing available to school districts was traceable to school district funds available from local real estate taxation, not to a state decision to divide state resources unequally among school districts. The rationality of the disparity in *Rodriguez*, therefore, which rested on the fact that funding disparities based on differing local wealth were a necessary adjunct of allowing meaningful local control over school funding, does not settle the constitutionality of disparities alleged in this case, and we differ with the Court of Appeals in this respect." Papasan, 106 S.Ct. at 2946.

In a three member dissent, Justice Powell argued that since Mississippi's overall system of funding is similar to that employed by Texas in *Rodriguez*, "another reason" is presented for rejecting Papasan's claim. Papasan 106 S.Ct. at 2952, n.6. Justice White correctly notes that *Rodriguez* "upheld the overall structure of Texas' public

school financing and the component of that system allowing for variations due to local taxation" but that *Rodriguez* does not validate all disparities (i.e., such as the disbursement by Mississippi of 100 times more funds for Section 16 lands to one county over another) just because the overall structure of funding is similar to that employed in Texas. Papasan 106 S.Ct. at 2945, n. 16.

The Board of Elementary and Secondary Education does not argue here that the *Rodriguez* decision allows it to disburse wildly varying amounts of funds to the school districts of Louisiana. The central issue of the Papasan case—unequal distribution of state funds to local districts—has no relevance to this litigation.

Instead, as noted by United States Court of Appeals, Fifth Circuit, Louisiana actually discriminates in the distribution of minimum foundation funds in favor of parishes with relatively less real estate value through the "equalization factor" which deducts an assumed five and a half mills local tax thereby reducing by a greater amount the funds to the parishes with relatively more taxable wealth. The percentage of minimum foundation costs paid by the state is thus high for the plaintiff parishes Livingston and Grant; i.e., second and third highest in the state. See petitioners' Appendix I.

The actual amount of state funds sent per student varies according to a multitude of factors which affect the cost of services such as the number of special education students, the experience level of teachers and the size of the schools. Although there are some discrepancies because of these factors, the equalization factor does serve to favor those parishes with less ability to raise local

taxes. See opinion of apeals court, Petitioners' Appendix A. Petitioners' Appendix I also shows that the urban regions of Louisiana (which according to petitioners' argument are unduly advantaged by having better sales and property tax opportunities) are in the lowest tier of recipients of state funds per student; for example: Orleans (New Orleans) 50th; Caddo (Shreveport) 45th; East Baton Rouge, 52d; Lafayette, 58th; and Calcasieu (Lake Charles) 41st.

Louisiana's revenue sharing system is a further attempt to assist parishes with less taxable wealth. A state collected fund is disbursed back to the parishes on essentially a per capita basis with the funds to each parish then being divided among various entities including the school board. This is precisely the type of system which petitioners desire; their only lament is that not enough compensatory aid is sent to equalize completely the amounts spent on education for each student across the state.

III. PETITIONERS OFFERED NO EVIDENCE THAT STUDENTS IN THE COMPLAINING SCHOOL SYSTEMS ARE RECEIVING AN INADEQUATE EDUCATION.

In their writ application, petitioners concede that they cannot prove that the students in their school systems are not receiving a "minimally adequate education." Petitioners' writ application at p. 24. The Fifth Circuit of course noted that the record contained no evidence that a Louisiana school child has received an inadequate education because of insufficiency of funds and that the parties to the litigation conceded that all relevant facts were before the Court. Petitioners' Appendix A at 10a.

Petitioners have thus failed to offer any proof that the discrepancies in the amount of money spent per child for public education in Louisiana are related to the quality of education received. Although surprising at first blush, there is no consensus among educators that at certain levels, the spending of any extra money per child means there will be an increase in the quality of education the child will receive. The *Rodriguez* Court expressly noted that more money does not necessarily mean a better education. See *Rodriguez* at footnotes 56, 86 and 101.

IV. CONTRARY TO PETITIONERS' ASSERTIONS, LOUISIANA PROVIDES FOR SUBSTANTIAL LOCAL CONTROL OVER PUBLIC ELEMENTARY AND SECONDARY SCHOOLS.

Petitioners argue that there is nothing in the Louisiana Constitution that guarantees local control of schools and that Louisiana's system of organizing its schools does not serve the same salutory goal of allowing a measure of local involvement in determining public education policies that allowed the Texas system to be upheld in *Rodriguez*. Petition for writ at pp. 15 and 23. To the contrary, the Louisiana Constitution expressly forbids the State Board of Elementary and Secondary Education from exerting "control over the business affairs of a parish or city school board or the selection or removal of its officers and employees." Article 8, Section 3, La. Constitution of 1974. The Constitution further provides for the creation of parish school boards and recognizes all parish and city school boards in existence in 1974. Article 8, Sections 9 and 10.

As petitioners have noted there is no state involvement in the construction of schools. This is a local function that the parishes decide on their own and for which they are empowered to levy bonds and pass taxes as desired. Local elected school boards administer the affairs of the public school systems in every parish in the state. The rational basis of permitting local control of public education observed in the *Rodriguez* decision is thus equally present in the Louisiana system.

———o———

CONCLUSION

The issue before the Court is the same one that it confronted in *Rodriguez*—whether a state may establish a system for funding public education which relies in part on funding from local sources with the result that the total amount of money spent per child varies among the local school systems of the state. In an attempt to distinguish this case from *Rodriguez,* the plaintiffs have launched a rambling attack on the particulars of the Louisiana system of taxation, revenue sharing and homestead exemption. None of these mechanisms discriminate against the petitioner parishes; in fact the revenue sharing system and the equalization factor in the minimum foundation formula discriminate in favor of parishes with less taxable wealth. The discrepancies in total funding available per student engendered by the partial reliance on local funding is much less than was present in Texas when *Rodriguez* was decided. Moreover the plaintiffs have offered no proof that the level of difference in funds expended per

student has anything to do with the quality of education received by students.

This Court has wisely allowed the States great deference in their establishment of systems of taxation and funding of governmental programs. The Louisiana system serves the rational purpose of allowing a measure of local control over the affairs of the public educational system. The issues raised by the plaintiffs are political ones which should be, and have been in the past, brought before the state legislature. The petitioners' writ application should be denied.

Respectfully submitted,

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APPENDIX

EXHIBIT 7

Current Expenditure and Rank per ADM by School District, State of Louisiana, 1979-1984

Sheet 1

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Acadia	$1,533 (56)	$1,785 (62)	$2,077 (59)	$2,345 (43)	$2,325 (54)
Allen	1,758 (30)	1,853 (56)	2,138 (53)	2,149 (62)	2,338 (52)
Ascension	1,593 (51)	2,221 (18)	2,473 (22)	2,485 (26)	2,739 (19)
Assumption	1,542 (55)	1,767 (63)	2,106 (57)	2,301 (49)	2,355 (50)
Avoyelles	1,593 (50)	1,954 (46)	2,226 (43)	2,325 (47)	2,311 (56)
Beauregard	1,616 (47)	1,980 (43)	2,174 (48)	2,365 (41)	2,415 (40)
Bienville	1,746 (32)	2,392 (9)	2,209 (45)	2,987 (9)	2,779 (16)
Bossier	1,564 (53)	1,799 (59)	2,139 (52)	2,331 (45)	2,371 (46)
Caddo	1,852 (19)	2,227 (17)	2,468 (23)	2,589 (24)	2,583 (27)
Calcasieu	1,675 (43)	2,110 (26)	2,475 (21)	2,464 (28)	2,404 (41)
Caldwell	1,865 (14)	2,091 (29)	2,316 (37)	2,433 (32)	2,534 (31)
Cameron	2,383 (2)	2,998 (2)	3,511 (2)	5,875 (1)	6,099 (1)
Catahoula	1,864 (16)	2,276 (12)	2,660 (13)	2,804 (17)	3,046 (7)
Claiborne	1,751 (31)	2,095 (27)	2,323 (35)	2,498 (25)	2,576 (28)
Concordia	1,687 (39)	2,113 (25)	2,381 (27)	2,393 (37)	2,492 (35)
De Soto	1,388 (62)	1,883 (54)	2,339 (31)	2,337 (44)	2,386 (44)
East Baton Rouge	1,809 (23)	2,193 (20)	2,652 (15)	3,310 (6)	2,910 (12)
East Carroll	1,705 (37)	2,141 (24)	2,252 (39)	2,415 (33)	2,612 (23)

Source: computer data base and library and records of Louisiana Department of Education, as compiled by Bob Garvue.

Current Expenditure and Rank per ADM by School District,
State of Louisiana, 1979-1984

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
East Feliciana	$1,601 (49)	$1,939 (47)	$2,234 (42)	$2,278 (53)	$2,347 (52)
Evangeline	1,859 (18)	1,915 (51)	2,055 (61)	2,157 (61)	2,144 (64)
Franklin	1,820 (22)	1,985 (39)	2,393 (26)	2,395 (35)	2,515 (34)
Grant	1,643 (45)	1,792 (60)	2,129 (55)	2,209 (57)	2,188 (62)
Iberia	1,672 (44)	1,939 (47)	2,175 (47)	2,299 (50)	2,299 (58)
Iberville	1,980 (11)	2,487 (5)	2,928 (6)	3,134 (7)	3,108 (6)
Jackson	2,009 (9)	2,159 (23)	2,548 (16)	2,994 (8)	2,821 (14)
Jefferson	1,774 (27)	2,269 (13)	2,661 (12)	2,789 (18)	2,984 (8)
Jefferson Davis	1,547 (54)	1,982 (41)	2,173 (49)	2,293 (52)	2,367 (47)
Lafayette	1,737 (33)	2,530 (4)	3,205 (3)	3,324 (5)	2,425 (38)
Lafourche	1,532 (57)	2,838 (57)	2,025 (62)	2,222 (56)	2,419 (39)
LaSalle	1,387 (63)	1,789 (61)	2,247 (41)	2,616 (22)	2,590 (25)
Lincoln	1,638 (46)	1,984 (40)	2,173 (50)	2,253 (55)	2,305 (57)
Livingston	1,224 (66)	1,559 (64)	1,767 (66)	1,901 (66)	1,892 (66)
Madison	1,678 (42)	2,017 (37)	2,201 (46)	2,304 (48)	2,366 (48)
Morehouse	1,791 (25)	1,962 (45)	2,425 (25)	2,158 (60)	2,533 (32)
Natchitoches	1,714 (35)	2,254 (15)	2,727 (9)	2,938 (13)	2,939 (10)
Orleans	1,865 (15)	2,095 (27)	2,525 (17)	2,665 (20)	2,912 (11)

Current Expenditure and Rank per ADM by School District,
State of Louisiana, 1979-1984

Sheet 3

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Ouachita	$1,317 (64)	$1,551 (66)	$2,018 (64)	$2,394 (36)	$2,587 (26)
Plaquemines	N.A.	2,800 (58)	2,375 (28)	2,710 (19)	2,603 (24)
Pointe Coupee	1,936 (12)	2,429 (8)	2,973 (5)	3,394 (3)	3,230 (3)
Rapides	1,583 (52)	2,047 (34)	2,306 (38)	2,452 (30)	2,380 (45)
Red River	1,861 (17)	2,085 (32)	2,365 (29)	2,456 (29)	2,519 (33)
Richland	2,219 (5)	1,981 (42)	2,739 (7)	2,327 (46)	2,477 (37)
Sabine	2,289 (4)	1,919 (50)	2,060 (60)	2,185 (59)	2,389 (43)
St. Bernard	1,773 (28)	2,336 (10)	2,512 (19)	2,961 (10)	2,707 (20)
St. Charles	2,729 (1)	3,129 (1)	4,467 (1)	3,373 (4)	3,136 (4)
St. Helena	1,430 (61)	1,926 (49)	2,316 (36)	2,356 (42)	2,742 (18)
St. James	1,990 (10)	2,269 (13)	2,697 (11)	2,955 (11)	3,133 (5)
St. John the Baptist	1,778 (26)	2,047 (34)	2,516 (18)	2,646 (21)	2,565 (30)
St. Landry	1,519 (58)	2,052 (33)	2,358 (30)	2,375 (39)	2,392 (42)
St. Martin	1,682 (41)	2,190 (21)	2,250 (40)	2,379 (38)	2,212 (61)
St. Mary	1,759 (29)	2,235 (16)	2,705 (10)	2,868 (14)	2,879 (13)
St. Tammany	1,499 (59)	1,555 (65)	1,996 (65)	2,195 (58)	2,333 (53)
Tangipahoe	1,602 (48)	1,889 (53)	2,136 (54)	1,935 (65)	2,253 (59)
Tensas	2,044 (8)	2,470 (6)	2,479 (20)	2,831 (15)	2,960 (9)

Current Expenditure and Rank per ADM by School District, State of Louisiana, 1979-1984

Sheet 4

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Terrebonne	$1,680 (38)	$2,043 (36)	$2,339 (32)	$2,464 (27)	$2,322 (55)
Union	1,497 (60)	1,860 (55)	2,156 (51)	2,131 (63)	2,181 (63)
Vermilion	2,076 (7)	2,090 (30)	2,652 (14)	2,873 (13)	2,792 (15)
Vernon	1,685 (40)	2,292 (11)	2,123 (56)	2,369 (40)	2,041 (65)
Washington	1,897 (13)	2,167 (22)	2,324 (34)	2,408 (34)	2,674 (22)
Webster	1,706 (36)	1,973 (44)	2,025 (63)	2,268 (54)	2,363 (49)
West Baton Rouge	2,120 (6)	2,461 (7)	2,737 (8)	2,810 (16)	2,763 (17)
West Carroll	1,802 (24)	2,017 (37)	2,332 (33)	2,443 (31)	2,576 (29)
West Feliciana	2,371 (3)	2,696 (3)	3,111 (4)	3,447 (2)	3,649 (2)
Winn	1,829 (21)	2,195 (19)	2,455 (24)	2,601 (23)	2,689 (21)
City of Monroe	1,730 (34)	1,896 (52)	2,100 (58)	2,294 (51)	2,478 (36)
City of Bogaluss	1,849 (20)	2,090 (30)	2,214 (44)	2,122 (64)	2,244 (60)
State*	1,728	2,085	2,436	2,591	2,598
Range	2,729- 1,224	3,129- 1,551	4,467- 1,763	5,875- 1,901	6,099- 1,892

SOURCE: Louisiana Department of Education, *Bulletin 1472*, 1979-1984.
*Average